

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Emergency Broadband Benefit Program)	WC Docket No. 20-445
)	

**PETITION FOR WAIVER AND
REQUEST FOR EXPEDITED TREATMENT**

Pursuant to 47 C.F.R. § 1.3, Radiate Holdings, L.P. and certain of its wholly-owned operating subsidiaries (collectively, “Radiate”),¹ by their attorney, respectfully submit this Petition for Waiver and Request for Expedited Treatment (“Petition”) and ask the Commission to grant Radiate, on an expedited basis, a limited waiver of the Emergency Broadband Benefit (“EBB”) Program reimbursement rules. Specifically, Radiate requests that the Commission both (1) waive the requirement that Radiate makes its claim for reimbursement within fifteen (15) days of the first snapshot date that a subscriber is enrolled in EBB and (2), for each newly-enrolled EBB subscriber, grant Radiate an additional thirty (30) days to submit the initial reimbursement claim, *i.e.*, the 15th day of the month following the *second* snapshot date for the subscriber. Grant of this waiver will serve the public interest without undermining the EBB

¹ The Radiate subsidiaries in question are RCN Telecommunications Services, LLC; RCN Telecom Services (Lehigh) LLC; RCN Telecom Services of Philadelphia, LLC; RCN Telecom Services of New York, LP; RCN Telecom Services of Massachusetts, LLC; RCN Telecom Services of Illinois, LLC; Starpower Communications, LLC; Grande Communications Networks, LLC; Astound Broadband LLC; and ETS Telephone Company, Inc. (collectively, the “Radiate Companies”).

Program or the ability of the Universal Service Administrative Company (“USAC”) to track EBB Program disbursements.²

Introduction and Background

Radiate provides cable, competitive telecommunications, and broadband services to over million customers in ten States and the District of Columbia. Each of the Radiate Companies has been approved by the Commission and USAC to participate in the EBB Program and, collectively, have received approval to offer many different broadband Internet access pricing plans in a dozen markets – with separate service and pricing plans in each market – but all billing and accounts as part of the EBB Program. As a result, the reimbursement amount Radiate is entitled to for each customer listed on the monthly snapshot depends on the broadband Internet access service plan selected by the customer. The Radiate Companies, as a group, verify and enroll EBB Program customers, upload them into the National Lifeline Accountability Database (“NLAD”), and are making its claims for reimbursement centrally in one Radiate department whose staff, prior to institution of the EBB Program, did not have significant experience working with the federal systems and database involved. The variety of pricing plan options spread over the Radiate Companies requires this staff to determine the reimbursement amount for each subscriber participating in the EBB Program.

As stated in the *EBB Program Order*, EBB Program reimbursements will be based on “a snapshot report of a provider’s enrolled subscribers as of the first of the month.”³ Providers

² As of this Petition’s filing, the Commission has granted two similar waiver requests. *See Emergency Broadband Benefit Program*, Order, DA 21-455, WC Docket No. 20-445 (rel. April 20, 2021) (“*Verizon Waiver Order*”); *Emergency Broadband Benefit Program*, Order, DA 21-557, WC Docket No. 20-445 (rel. May 11, 2021) (“*Altice Waiver Order*”). In addition, at least four other similar, pending waiver requests have been filed in the above-referenced docket.

must submit their reimbursement claims to USAC by the 15th of each month (or the following business day in the event the 15th falls on a weekend or holiday) for those households reflected on the monthly snapshot report, with no chance to revise claims once submitted.⁴

Since beginning to accept application from customers in the EBB Program less than two weeks ago, Radiate has already begun providing broadband Internet access services to approximately 700 EBB-qualified customers, with another almost 200 that have been verified and will commence receiving EBB-qualified shortly. More than 1000 other applications are in the various stages of verification prior to installation, and the numbers are growing. The time is rapidly approaching when Radiate must begin seeking reimbursements. The first snapshot date for the Radiate Companies is June 1, 2021, and the initial reimbursements claims for newly-enrolled customers appearing on that snapshot must be filed with USAC by June 15, 2021.

As other providers seeking waivers have noted, the Commission formulated the EBB Program reimbursement process to leverage the reimbursement process in the Lifeline program,⁵ but the EBB Program reimbursement process is far more challenging for providers to administer because, unlike the Lifeline program, there will be no standard reimbursement amount for all EBB customers.⁶ Moreover, the challenge is exacerbated for a provider such as Radiate whose staff did not have material pre-existing experience with the relevant elements of the Lifeline program leveraged by the EBB Program, such as the NLAD.

In addition, EBB providers, like the Radiate Companies, will have significantly less time than Lifeline providers to submit the associated reimbursement claim to USAC despite having to

³ *Emergency Broadband Benefit Program*, Report and Order, FCC 21-29, WC Docket No. 20-445, ¶ 98 (rel. Feb. 26, 2021) (“*EBB Program Order*”).

⁴ *EBB Program Order* ¶¶ 99-100. Providers also are required to certify to the accuracy of their claims for reimbursement at the time of submission. *Id.* ¶ 100.

⁵ *See, e.g.*, Cable One Expedited Request for Waiver, WC Docket No. 20-445, at 2 (filed May 17, 2021), *citing EBB Program Order* ¶ 98.

⁶ *Id.* at 2; *see also Verizon Waiver Order* ¶ 7; *Altice Waiver Order* ¶ 8.

determine the appropriate reimbursement amount for each customer. Lifeline providers have twelve months from the snapshot date to submit a claim or make upward revisions to a previously-submitted claim,⁷ but EBB Program participants have only fifteen days from the snapshot date to submit a reimbursement claim. The Commission's rules prohibit EBB providers from modifying previously submitted claims.⁸ Radiate appreciates why the Commission adopted the short time frames for the EBB Program,⁹ but the result is a very narrow window for Radiate to prepare reimbursements in the first month in which subscribers are enrolled and start receiving EBB rates. Radiate signs up the qualified customers – whether entirely new to Radiate or existing customers that meet the eligibility criteria – and they begin receiving EBB-qualified service immediately upon verification, and thus may be included in the snapshot. But before Radiate can submit reimbursement claims, it must determine the discount each qualified-and-signed-up customer will receive. Radiate's challenges with newly-signed-up EBB-qualified customers is exacerbated because, although there have not been problems for the large majority of customers, for a significant fraction of customers Radiate is encountering problems getting them uploaded into the NLAD. These uploading problems are encountered after Radiate, in keeping with the EBB program, has already begun providing sharply discounted broadband service to the newly-enrolled subscribers in anticipation of Radiate obtaining reimbursement.

⁷ See, e.g., [usac.org/lifeline/reimbursement/](https://www.usac.org/lifeline/reimbursement/) (“Service providers have up to one year after the data month to submit originals and upward revisions.”).

⁸ See *EBB Program Order* ¶¶ 98-100.

⁹ The Commission determined these deadlines would allow the Commission and USAC to “track disbursements and to provide a projection for the depletion of the Fund that is based on the most accurate and up-to-date household and disbursement information.” *EBB Program Order*, ¶ 100.

Discussion: Radiate’s Narrow Request Satisfies the Commission’s Test for Waivers

Under the circumstances described above, despite the continuing diligence of Radiate’s staff, it has become clear that there is a real chance that it will not be able to submit all initial claims on a timely basis. Therefore, Radiate respectfully requests, on an expedited basis, a limited waiver of the 15-day claim deadline. Specifically, Radiate seeks a waiver and thirty additional days only for the first reimbursement request submitted for a newly-enrolled EBB customer, whether a new customer to EBB or an existing customer that qualifies for and converts to taking broadband Internet access services under the EBB discount. Under its requested waiver, if granted, for such new customers only, Radiate would submit its first request for reimbursement no later than the 15th day of the month *after* the month of the snapshot date on which an EBB customer first appears. Thus, for example, Radiate would have until July 15, 2021, to make the initial reimbursement claims for customers first appearing in Radiate’s June 1 snapshot.

Radiate’s Petition satisfies the relevant standard for waivers. The Commission has authority to waive its rules for “good cause shown.”¹⁰ A waiver of a Commission rule is warranted in cases where special circumstances exist warranting that the general rule not apply and when strict compliance would be inconsistent with the public interest.¹¹ Factors supporting a waiver grant include where strict application of the rule would create hardship, where equity dictates the rule not be strictly applied, or where more effective implementation of overall policy can be achieved on an individual basis rather than through unwavering application of a generic rule.¹²

¹⁰ 47 C.F.R. § 1.3.

¹¹ See *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969)(“*WAIT Radio*”).

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) *citing WAIT Radio*.

As explained below, grant of the Petition will address hardships being faced by Radiate to process and submit claims for newly-enrolled customers, will not undermine the purpose of the deadline from which it seeks relief (with which radiate largely expects to comply), and will further the public interest. First, the impending deadline and circumstances Radiate is facing described above support grant of Radiate's request for waiver. Radiate's personnel responsible for administering EBB Program enrollment and claims for reimbursement have been increasing their familiarity with the NLAD system, and the company has been updating its procedures and billing systems to implement the novel requirements of the EBB Program.. The variety of EBB options provided to Radiate customers across the Radiate Companies in a dozen markets responsible Radiate staff to determine, for each customer that enrolls in the EBB program, the appropriate EBB reimbursement amount for each subscriber on Radiate's monthly snapshot list. Under the Commission's EBB Program regulatory framework, in order to receive reimbursement for each newly-enrolled EBB customer, Radiate must ensure that customers are verified properly, uploaded into the NLAD system successfully, and then configured into its billing system reflecting the appropriate reimbursement amount within the fifteen-day window between the snapshot date and the deadline for reimbursement submissions. Circumstances such as these, and the hardships they present, have weighed in favor of the Commission's two recent waiver grants.¹³

To exacerbate its challenges, Radiate staff have encountered issues and delays with uploading into the NLAD EBB Plan customers whose service has commenced in approximately twenty-three percent (23%) of the cases. Although Radiate is diligently attending to the

¹³ *Altice Waiver Order* ¶ 8 (“we are convinced that the 15-day deadline for the first reimbursement claim for a newly-enrolled EBB subscriber poses a substantial hardship to Altice in its EBB Program participation and amounts to a special circumstance that warrants a deviation from the general rule”); *see also Verizon Waiver Order* ¶ 8 (same).

challenges as they arise and more and more customers sign up with Radiate for EBB Program, Radiate is concerned that, as a result, it may be unable to complete the reimbursement the process in a timely manner for all qualified customers covering their first month of participation. Granting this Petition and allowing additional time for Radiate to review and complete the steps supporting its first-month reimbursement claims for *all* of its newly-enrolled EBB subscribers will enable Radiate to ensure its systems handle new EBB Program enrollments appropriately – and allow Radiate to receive all of the intended funds under the program.

Second, a grant will not undermine the purpose of the fifteen-day deadline. As noted earlier, the fifteen-day rule is designed to allow USAC to better track disbursement requests and project the depletion of EBB Program funds. Even before claims are submitted, USAC can already track the number of EBB customers enrolled in the NLAD. Grant of the targeted relief Radiate seeks will not materially undermine the purpose of the fifteen-day rule, as the Commission has found in the Verizon and Altice waiver grants.¹⁴ Radiate is seeking a waiver and one-month extension of the deadline only for newly-enrolled EBB customers. Further, Radiate does not anticipate that reimbursement claims for all newly-enrolled customers will be submitted after the deadline established in the rules. Indeed, Radiate projects, at this time, that it will be able to make first-month claims in a timely fashion for more than eighty percent (80%) of its current newly-enrolled customers already receiving EBB-qualifying service. Naturally, approved EBB providers have

¹⁴ *Altice Waiver Order* ¶ 8 (“We find that granting this limited waiver will not materially undermine USAC’s ability to track disbursements and forecast for the projected final month of the program as the waiver Altice is seeking is limited to a one-month delay of only a subscriber’s first reimbursement snapshot.”); *see also Verizon Waiver Order* ¶ 8 (same).

every incentive to submit for reimbursement as soon as possible, and a grant of a waiver to Radiate will not affect that incentive, for itself let alone for other providers.¹⁵

Finally, grant of this Petition will serve the public interest by supporting in the many markets where it operates across the country, Radiate's ability to offer qualifying new and existing subscribers eligible broadband Internet access service packages to which the EBB discount can be applied. This serves the purpose of the program to bring the benefits of the EBB Program to as many qualified subscribers as possible.¹⁶ By granting the Petition on an expedited basis, the Commission will ensure that Radiate, which in its first month of participation in the EBB Program has enrolled many hundreds of customers, is able from the start to obtain the full reimbursement for qualifying services to which it is entitled from the fund Congress established.

¹⁵ See, e.g., EBB Program Order ¶ 98 (“For those providers seeking to have their reimbursement claim processed quicker, they must review and certify their reimbursement claims sooner [than the deadlines], as established by USAC.”).


¹⁶ See *Altice Waiver Order* ¶ 9 (“we determine that granting the Petition will serve the public interest because the objective of the EBB Program is to encourage as many service providers as possible to offer the EBB discount on a variety of services”); see also *Verizon Waiver Order* ¶ 9 (same).

Conclusion

WHEREFORE, for the foregoing reasons, Radiate respectfully requests that the Commission grant an expedited, limited waiver of the EBB Program rules to allow it an additional thirty days to submit the first reimbursement claim for a newly-enrolled EBB customer, *i.e.*, until the 15th day of the next month following the first snapshot date the customer is enrolled in the EBB Program.

Respectfully submitted,

RADIATE HOLDINGS L.P.

A handwritten signature in black ink, appearing to read 'E. Yorkgitis, Jr.', is written over the printed name.

Edward A. Yorkgitis, Jr.

KELLEY DRYE & WARREN LLP

3050 K Street NW

Suite 400

Washington, D.C. 20007

202-342-8400

cyorkgitis@kelleydrye.com

Its Attorney

VERIFICATION

I, Joseph Kahl, state that I am the Vice President, Regulatory & Public Affairs, of Radiate Holdings L.P. (“Radiate”); that I am authorized to make this Verification on behalf of Radiate; that I am generally familiar with the activities of Radiate and its subsidiary operating companies that are participating in the Federal Communications Commission’s Emergency Broadband Benefit Program as providers; that I have read the foregoing Petition for Waiver and Request for Expedited Treatment of Radiate (“Petition”); and that the statements of fact in the foregoing Petition with respect to Radiate are true and correct to the best of my knowledge, information, and belief.



Joseph Kahl
Vice President, Regulatory & Public Affairs
Radiate Holdings, L.P.
650 College Road East
Suite 3100
Princeton, NJ 08540

Executed on this 25th day of May 2021.